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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/223,347	12/30/1998	PIERRE BIERRE	P-4286	1754

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RICHARD J RODRICK
BECTON DICKINSON AND COMPANY
ONE BECTON DRIVE
FRANKLIN LAKES, NJ 074171880

EXAMINER

CROSS, LATOYA I

ART UNIT PAPER NUMBER

1743

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/223,347

Applicant(s)

BIERRE ET AL.

Examiner

LaToya I. Cross

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51-70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 51-70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 22, 2003 has been entered. Claims 51-70 are pending.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 51-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klein '134 in view of Japanese publication 08304410 to Susumu et al.

Klein teaches a test tube for storing sample material. The test tubes (10) each contain a bar code or alphanumeric code to identify the test tube. The code is further associated with the contents of the test tube after a sample is placed within the test tube. Klein teaches that the bar code/alphanumeric codes are placed on the test tube before it is used to store a sample. Then, after a sample is placed in each particular tube, the identity of the sample is associated with the bar/alphanumeric code. See col. 5, lines 41-55 and figure 4.

Klein differs from the instant invention in that there is no specific teaching of a database containing information about the container and information concerning the contents of the container.

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Susumu et al generally teach bar codes on the external surfaces of sample containers. Susumu et al teach that the bar code is read and the information from the bar code is sent to a host computer, which in turn obtains information regarding the patient from a database corresponding to the bar code information. It would have been obvious to one of ordinary skill in the art to have a database containing information regarding the test tubes and contents associated with the bar coded test tubes of Klein. In using a database, the container information and content information can be easily stored and easily retrieved. Using a database would also allow for information on multiple container and samples to be present in a central location making information retrieval by the user quick and easy. Because Klein teaches that barcodes are associated with the individual tubes and later associated with the contents of the tubes, it would have been obvious to one of ordinary skill in the art to have two databases – one for the tubes themselves and one for the contents of the tubes. Where the bar codes are associated with the tubes during manufacturing, it would have been obvious that the manufacturer would be responsible for the database of information associated with the tubes. Further, where the user begins to store samples in the tubes, it would have been obvious that the user would be responsible for the information associated with the contents of tubes.

With respect to claim 55, Applicants' admit at page 21 of the specification, lines 18-20, that it is well known to access information from a database using a direct link computer or the internet.

With respect to claims 60 and 61, Applicants' admit at page 17, lines 3-5 that 12 and 18 decimal digit identifiers are well known in the art of bar coding.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious, within the meaning of 35 USC 103 in view of the teachings of Klein and Susumu et al.

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3. Claims 62-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klein in view of Susumu et al as applied to claims 51-61 above, and further in view of Pulaski et al.

Pulaski et al teach a process for high contrast marking on surfaces using lasers, whereby micro-reflectors are formed on the surfaces being marked. The surface markings may be applied to glass or plastic surfaces of containers. Pulaski et al disclose prior art markings which were inferior since they could be removed during shipping or handling processes. The reference teaches the advantages of using laser markings which would prevent removal of the marks and allow for containers to be marked with specialized information. See col. 1, lines 49-57 and col. 2, lines 51-53. At col. 3, lines 51-55, Pulaski et al teach the use of laser beams for directly marking or engraving the surface.

It would have been obvious to one of ordinary skill in the art to use the concepts of laser etching and specular reflectance on the container provided by Klein since the identification process of Pulaski et al '778 would provide a more accurate manner for labeling biological samples and a manner in which the labeling may not be tampered with. Use of such as process would allow for easy identification of the containers.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious within the meaning of 35 U.S.C. 103 in view of the teachings of Klein, Susumu et al and Pulaski et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 703-305-7360.

The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



LaToya Cross
Patent Examiner
AU 1743